



**OFFICE OF PERSONNEL  
MANAGEMENT****5 CFR Part 737****Post Employment Conflict of Interest****AGENCY:** Office of Personnel  
Management.**ACTION:** Final regulation.

**SUMMARY:** The Office of Personnel Management is issuing a final regulation under the Ethics in Government Act of 1978 which (1) designates certain positions subject to the post employment conflict of interest regulations applicable to "Senior Employees," and (2) designates certain statutory and non-statutory agencies/bureaus for the purpose of limiting the application of 18 U.S.C. 207(c).

**EFFECTIVE DATE:** July 31, 1985.**ADDRESS:** Office of Government Ethics,  
P.O. Box 14108, Washington, D.C. 20044.**FOR FURTHER INFORMATION CONTACT:**  
Gary Davis or Robert Flynn at (202) 632-7642.**SUPPLEMENTARY INFORMATION:**

Subsection 207(d)(1)(C) of title 18 U.S.C., contained in Title V of the Ethics in Government Act of 1978, as amended, ("the Act"), (Pub. L. 95-521), gives the Director of the Office of Government Ethics ("OGE") authority to designate (1) certain employee positions for purposes of the restrictions of 18 U.S.C. subsections 207(b)(ii) and 207(c), and (2) agencies and bureaus, within a parent department or agency, having separate and distinct subject matter jurisdiction; i.e., "separate non-statutory agencies/bureaus." Regulations implementing this authority were published on February 1, 1980 (45 FR 7402). Those regulations designated as "Senior Employees" all employees in a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 of the General Schedule, as prescribed by 5 U.S.C. 5332, or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, subject to specific exemptions to be made by OGE. The regulations also set forth those separate statutory (18 U.S.C. 207(e)) agencies and bureaus and those separate non-statutory agencies/bureaus (18 U.S.C. 207(d)(1)(C)) as determined by the Director, OGE, to be qualified for designation at the time of publication.

Regarding "Senior Employee" designations, upon review of agency recommendations, made pursuant to the requirement set forth in 5 CFR 737.25(b)(1), the Director, OGE,

determined that only those non-exempted positions, i.e., those subject to the prohibitions of 18 U.S.C. 207(b)(ii) and (c), would be published in the Federal Register. A partial list of such "designated" positions was contained in the February 1, 1980 Federal Register publication (45 FR 7402). That list was followed by another partial list which was published on February 8, 1980 (45 FR 8544). Annual amendments to the list were published on November 14, 1980 (45 FR 75500); March 5, 1982 (47 FR 9694) and February 25, 1983 (48 FR 8188). The combined lists represented all 18 U.S.C. 207(d)(1)(C) positions which were not exempted by the Director, OGE. This regulation consolidates and amends the previously published lists and is based upon a review of agency annual submissions made pursuant to 5 CFR 737.25(b)(1). All positions designated pursuant to 5 U.S.C. 207(d)(1)(C) not previously designated are marked by an asterisk. In accordance with 5 CFR 737.25(d), designation of such positions shall not become effective until the last day of the fifth full calendar month after this publication.

Section 737.25 of the final regulations sets forth the standards and procedures to be applied in determining which positions shall be designated. OGE also issued a memorandum to heads of departments, independent agencies, commissions and Government corporations/designated agency ethics officials dated April 26, 1979, giving additional information and guidance on this subject. Section 737.11 sets forth the standards and procedures to be applied in determining which separate statutory and non-statutory agencies and bureaus shall be designated.

The Director, OGE, in consultation with each department and agency concerned, has determined that the positions set forth below qualify for designation as "Senior Employee" positions. 5 CFR 737.33 is hereby amended accordingly. The Director has further determined, in consultation with each department or agency concerned, the separate statutory and non-statutory agencies/bureaus set forth below qualify for such designation.

The "Senior Employee" positions listed constitute all such positions designated under the provisions of subsection 207(d)(1)(C) of title 18 U.S.C. for the departments and agencies listed. In accordance with 5 CFR 737.25(d), subsequent designation of positions within the department or agencies listed shall not be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director, OGE, of intention to so designate. Such fair notice shall not

apply to subsequent designations made under the rule concerning positions shifting set forth in 5 CFR 737.25(i).

In several cases, a position in one agency has been designated while a position of similar title in another has not. OGE has, in the exercise of its discretion, accorded some deference to the decision of a department or agency to designate a position where that decision was in favor of designation above minimum OGE standards. As OGE conducted the review necessary for these designations, it became apparent that, because of the subject matter of a department's or agency's business, the gravity of the "revolving door" problems varied significantly from agency to agency. Moreover, positions which were ostensibly similarly titled and described nevertheless had different roles from agency to agency. Also, OGE believes it desirable that the balance between postemployment restrictions and impact on recruiting and retention be adjudged on an agency level, as long as minimum standards are met.

Positions automatically designated by 18 U.S.C. 207(d)(1) (A) and (B) are not included in this publication.

This is a final not a proposed regulation. The Director of the Office of Government Ethics, acting pursuant to 5 U.S.C. 553(b)(3)(A), has found good cause for waiving the general notice of proposed rulemaking and the 30 day delay in effectiveness. This regulation is interpretive in nature, exempt from 5 U.S.C. 553.

**E.O. 12291, Federal Regulation**

OGE has determined that this is not a major rule as defined under section 1(B) of E.O. 12291.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it only affects federal employees.

**List of Subjects in 5 CFR Part 737**

Conflict of interests, Government employees.

Office of Personnel Management.

David H. Martin,

Director, Office of Government Ethics.

Accordingly, the Office of Personnel Management is amending 5 CFR Part 737 as follows:

1. The authority citation for Part 737 continues to read as follows:

Authority: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-

19 (June 13, 1979), 5 U.S.C. Appendix; Pub. L. 96-150 (November 11, 1983); 18 U.S.C. 207.

2. Section 737.31 is revised to read as follows:

**§ 737.31 Separate statutory agencies: Designations.**

In accordance with the provisions of 18 U.S.C. 207(e) and 737.13, each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it separate statutory agencies or bureaus as set forth below:

Parent Agency: EXECUTIVE OFFICE OF THE PRESIDENT

Separate Statutory Components:  
Office of Management and Budget  
Council of Economic Advisers  
National Security Council  
United States Trade Representation  
Council for Environment Quality  
Office of Science and Technology Policy  
Office of Administration  
White House Office and the Office of Policy

Development

Office of the Vice President

Parent Agency: DEPARTMENT OF THE TREASURY

Separate Statutory Components:  
Bureau of Alcohol, Tobacco and Firearms  
Bureau of Engraving and Printing  
Bureau of the Mint  
Comptroller of the Currency  
Internal Revenue Service  
United States Customs Service  
United States Secret Service

Parent Agency: FEDERAL EMERGENCY MANAGEMENT AGENCY

Separate Statutory Components: United States Fire Administration

Parent Agency: OFFICE OF PERSONNEL MANAGEMENT

Separate Statutory Components: Office of Government Ethics

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Separate Statutory Components:  
Food and Drug Administration  
Public Health Service  
Social Security Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION

Separate Statutory Components:  
Federal Aviation Administration  
Federal Highway Administration  
Federal Railroad Administration  
Maritime Commission  
National Highway Traffic Safety Administration  
Saint Lawrence Seaway Development Corporation  
United States Coast Guard

Urban Mass Transportation Administration

Parent Agency: DEPARTMENT OF LABOR

Separate Statutory Components:  
Bureau of Labor Statistics  
Mine Safety and Health Administration  
Occupational Safety and Health Administration

Parent Agency: DEPARTMENT OF JUSTICE

Separate Statutory Components:  
Bureau of Prisons (including Federal Prison Industries, Inc.)

Community Relations Service  
Drug Enforcement Administration  
Federal Bureau of Investigation  
Foreign Claims Settlement Commission  
\*National Institute of Justice  
\*Bureau of Justice Statistics  
\*Office of Justice Assistance, Research and Statistics

Immigration and Naturalization Service  
Independent Counsel

United States Parole Commission

Parent Agency: DEPARTMENT OF DEFENSE

Separate Statutory Components:

Department of the Army  
Department of the Navy  
Department of the Air Force  
Defense Mapping Agency

Parent Agency: DEPARTMENT OF ENERGY

Separate Statutory Components:

Federal Energy Regulatory Commission

Parent Agency: DEPARTMENT OF COMMERCE

Separate Statutory Components:

Economic Development Administration  
Patent and Trademark Office  
National Oceanic and Atmospheric Administration

Bureau of the Census

Parent Agency: NATIONAL CREDIT UNION ADMINISTRATION

Separate Statutory Component:

Central Liquidity Facility

Parent Agency: NATIONAL CREDIT UNION ADMINISTRATION

Separate Statutory Component:

Central Liquidity Facility

3. Section 737.32 is revised to read as follows:

**§ 737.32 Separate components of agencies or bureaus; designations.**

In accordance with the provisions of 18 U.S.C. 207(d)(1)(C) and § 737.14, each of the component agencies or bureaus as set forth below is determined, for purposes of 18 U.S.C. 207(d) and this Part 737, to be separate from the remaining agencies and bureaus of its parent agency (except such agencies and bureaus as specified):

Parent Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Separate Components:

Health Care Financing Administration

Parent Agency: DEPARTMENT OF TRANSPORTATION

Separate Components:

Alaska Railroad

Parent Agency: DEPARTMENT OF LABOR

Separate Components:

Employment and Training Administration

Employment Standards Administration

Labor-Management Services Administration

Parent Agency: DEPARTMENT OF DEFENSE

Separate Components:

Defense Communications Agency

Defense Intelligence Agency

Defense Nuclear Agency

\* These three components shall not, for purposes of 18 U.S.C. 207(c), be considered separate from one another but only from other separate components of the Department of Justice.

National Security Agency

Defense Logistics Agency

Parent Agency: DEPARTMENT OF STATE

Separate Components:

Foreign Service Grievance Board

International Joint Commission, United

States and Canada (American Section)

Parent Agency: DEPARTMENT OF JUSTICE

Separate Statutory Components:

Office of the United States Attorney (for

each judicial district (95))—however,

each such Office is not designated as

separate from the Office of the U.S.

Marshall for the same judicial district.

Office of United States Marshall (for each

judicial district (95))—however, each

such Office is not designated as separate

from the Office of the U.S. Attorney for

the same judicial district.

Antitrust Division

Civil Rights Division

Land and Natural Resources Division

Tax Division

Criminal Division

Office for Improvements in the

Administration of Justice

Parent Agency: DEPARTMENT OF

COMMERCE

Separate Components:

International Trade Administration

Minority Business Development

Administration

National Telecommunication and

Information Administration

Bureau of Industrial Economics

4. Section 737.33 is revised to read as follows:

**§ 737.33 "Senior Employee" designations.**

In accordance with § 737.25(b)(1), the following employee positions have been designated as "Senior Employee" positions for purposes of subsections 207(b)(ii) and (c) of title 18, U.S.C. as amended.<sup>1</sup>

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (OFFICE OF ADMINISTRATION)

Positions:

AD Director, Automated Systems Division

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (COUNCIL OF ECONOMIC ADVISERS)

Positions: No section 207(d)(1)(C) designations.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, (COUNCIL ON ENVIRONMENTAL QUALITY)

Positions: No section 207(d)(1)(C) designations.

<sup>1</sup> All positions designated pursuant to section 207(d)(1)(C) not previously designated are marked by an asterisk (\*). Those positions marked by a double asterisk (\*\*) are former Executive level positions which were converted to SES positions. Positions automatically designated by section 207(d)(1)(A) and (B) are not shown.

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SES Deputy Assistant Secretary, Tax Policy and Director, Office of Tax Analysis

#### OFFICE OF THE FISCAL ASSISTANT SECRETARY

SES Assistant Secretary

#### OFFICE OF THE ASSISTANT SECRETARY FOR ELECTRONIC SYSTEMS AND INFORMATION TECHNOLOGY

SES Assistant Secretary

#### OFFICE OF THE ASSISTANT SECRETARY FOR CONSUMER LIAISON AND BUSINESS AFFAIRS

SES Assistant Secretary

#### OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

SES Assistant Secretary

SES\* Deputy Assistant Secretary for Operations

#### TREASURER OF THE UNITED STATES

GS-18 Treasurer and National Savings

Bond Director, Office of the Secretary

SES Deputy Treasurer

#### OFFICE OF REVENUE SHARING

SES Director

#### COMPTROLLER OF THE CURRENCY

SES Senior Advisor to the Comptroller

SES Deputy Comptroller, Bank Organization and Structure

SES Deputy Comptroller, Industry and Public Affairs

SES Senior Deputy Comptroller for National Operations

SES Senior Deputy Comptroller for Policy and Planning

SES Senior Deputy Comptroller for Bank Supervision

#### CUSTOMS SERVICE

SES Commissioner

SES Deputy Commissioner

SES Deputy Commissioner, International Affairs

SES Assistant Commissioner, Enforcement

SES Deputy Assistant Commissioner, Enforcement

SES Director, Office of Investigations

SES Assistant Commissioner, Commercial Operations

SES Deputy Assistant Commissioner, Inspection and Control

SES Assistant Commissioner, Inspection and Control

SES Comptroller

SES\* Assistant Commissioner, Internal Affairs

#### BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

SES Commissioner

SES Deputy Commissioner

#### INTERNAL REVENUE SERVICE

SES Deputy Commissioner

SES Associate Commissioner (Data Processing)

SES Associate Commissioner (Operations)

SES Associate Commissioner (Policy and Management)

SES Assistant Commissioner, (Inspection)

SES Regional Commissioner, (C)

SES Regional Commissioner, (MA)

SES Regional Commissioner, (MW)

SES Regional Commissioner, (NA)

SES Regional Commissioner, (SE)

SES Regional Commissioner, (SW)

SES Regional Commissioner, (W)

#### LEGAL DIVISION

SES Deputy General Counsel, Office of the General Counsel

SES Assistant General Counsel and Director, Tax Legislative Counsel, Office of the General Counsel

SES International Tax Counsel and Director, Office of International Tax Counsel, Office of the General Counsel

SES Chief Counsel, U.S. Customs Service

SES Deputy Chief Counsel, U.S. Customs Service

SES Chief Counsel, Comptroller of the Currency

SES Deputy Chief Counsel, Comptroller of the Currency

SES Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

SES Deputy Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

SES Deputy Chief Counsel, Internal Revenue Service

#### U.S. MINT

GS-18 Director

SES Deputy Director of the Mint

SES Associate Director for Policy and Management

SES Associate Director for Operations

#### U.S. SAVINGS BONDS DIVISION

No section 207(d)(1)(C) designations.

#### U.S. SECRET SERVICE

SES Director

SES Deputy Director

#### BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

SES Director

SES Deputy Director/Associate Director (Compliance Operations)

SES Deputy Director/Associate Director (Law Enforcement)

SES Assistant Director, Internal Affairs

#### BUREAU OF THE PUBLIC DEBT

SES Commissioner of Public Debt

#### OFFICE OF REVENUE SHARING

SES Director

#### FEDERAL LAW ENFORCEMENT TRAINING CENTER

No section 207(d)(1)(C) designations.

#### BUREAU OF ENGRAVING AND PRINTING

SES Director

SES Deputy Director

SES Assistant Director (Administration)

SES Assistant Director (Operations)

SES Assistant Director (Research and Engineering)

#### AGENCY: ACTION

Positions:

SES Executive Officer

SES Deputy Associate Director for Older Americans Volunteer Program (OAVP)

SES Assistant Director for Administration

SES Deputy Assistant Director for Administration

SES General Counsel

SES Deputy Assistant Director for Volunteer Liaison

SES Assistant Director for Financial Management

SES Deputy Associate Director for VISTA/Service Learning Programs

SES Director, Vietnam Veterans Leadership Program

SES Inspector General

SES Executive Assistant

SES\* Deputy General Counsel

#### AGENCY: ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Positions:

SES General Counsel

SES Executive Director

SES Research Director

#### AGENCY: ADVISORY COUNCIL ON HISTORIC PRESERVATION

Positions:

SES Executive Director

SES General Counsel

#### AGENCY: AMERICAN BATTLE MONUMENTS COMMISSION

Positions:

0-8 Secretary

#### AGENCY: APPALACHIAN REGIONAL COMMISSION

Positions: No section 207(d)(1)(C) designations.

#### AGENCY: BOARD FOR INTERNATIONAL BROADCASTING

Positions:

SES Executive Director

#### AGENCY: CENTRAL INTELLIGENCE AGENCY

Positions:

AD Executive Director

AD All Deputy Directors and Associate Deputy Directors of Directorates

AD All Heads of Independent Offices

#### AGENCY: CIVIL AERONAUTICS BOARD

Positions:

SES Managing Director, Office of Managing Director

SES Director, Office of Congressional, Community & Consumer Affairs

SES Director, Bureau of Domestic Aviation

SES Deputy Director/Associate Director, Legal, Bureau of Domestic Aviation

SES General Counsel, Office of the General Counsel

SES Deputy General Counsel, Office of the General Counsel

SES\* Director, Bureau of International Aviation

SES Deputy Director, Bureau of International Aviation